IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

CRL.A.No. 327 of 2002()

CC.503/1998 of JUDL. MAGISTRATE OF FIRST CLASS, KUNNAMANGALAM

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APPELLANT: APPELLANT/COMPLAINANT:

VYAPARI VYAVASAYI EKOPANA SAMITHI,
KARANTHUR, REPRESENTED BY ITS
GENERAL SECRETARY, K. RAVEENDRAN.

BY ADV. SRI.P.M.MOHAMED ALI
SRI.MAT.PAI

RESPONDENTS: RESPONDENT/ACCUSED/STATE:

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1. M. RAJAGOPALAN, S/O. APPUKUTTY NAIR,
MANATHANATH VEEDU, P.O. KARANTHUR, KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.N.M.JAMES
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 327 of 2002

Dated this the 21st March, 2007.

J U D G M E N T

The appellant is the complainant in C.C.No.503 of 1998, on the file of the Judicial First Class Magistrate Court, Kunnamangalam. To prove the offence against the first respondent, accused, the complainant examined one witness and marked six documents. The first respondent has examined one witness. The learned Magistrate after appreciating the evidence adduced by both sides, dismissed the complaint and acquitted the accused. Hence, the complainant is before this Court with this appeal, after obtaining leave of this Court.

2. I have heard the arguments advanced by both sides. The learned Magistrate has proceeded with the fact that Ext.P1 cheque for an amount of Rs.32,000/= was issued by the first respondent, accused, not for any amount received by him from the complainant organisation, but his brother was owing some amount to the organisation, which was operating a corpus of fund to help the beneficiaries therein.

3. The learned counsel appearing for the first respondent, accused, submitted that neither the first respondent, nor his brother Sivasankaran were the members of the Samithi. The first respondent has received the amount because of the personal relationship with the then Secretary of the organisation, and issued a cheque. But that cheque is misused by the present complainant, Vyapari Vyavasayi Ekopana Samithi.

4. Even if a cheque is issued for the discharge of any debt or 'other liability' as contained in Section 138 of the Negotiable Instruments Act, the same would attract the liability of the drawer of the cheque towards the drawee, for the amount mentioned therein. This view is laid down in **I.C.D.S. v. Beena Shabeer** *(2002 (3) KLT 218 SC)*. The learned counsel for the first respondent fairly concedes this point of law. But his argument is that the transaction which he had was not with the complainant organisation, but only with the Secretary of the organisation, in the personal capacity. The cheque is being misused by the organisation. But the first respondent did not enter the box and explained his contentions. DW.1 is a peon of the organisation who was collecting premia from the members of the complainant, organisation. Hence, I am unable to accept the

argument of the learned counsel for the first respondent that the evidence of DW.1 would enable the first respondent to establish that there was no transaction between himself and the organisation. On the other hand, it is for him to enter the box and explain, how Ext.P1 cheque was issued in favour of the organisation.

5. The learned counsel for the first respondent, at the stage, submitted that an opportunity may be given to the first respondent to rebut the presumption as required, in view of the I.C.D.S. case mentioned above. The learned counsel appearing for the appellant prayed that an opportunity may be given to the appellant, as well.

6. In the above facts situation, I am of the view that an opportunity be given to the parties to adduce further evidence, if they are so advised, so as to establish their respective contention.

7. To enable the same, I set aside the impugned order, dated 13.12.2001, and restore C.C.No.503/1998, to the file of the Judicial First Class Magistrate Court, Kunnamangalam. The matter is remitted to the court below for disposal according to the law.

8. The parties shall appear before the court below on 24.4.2007.

9. As the case is of the year 1998, I direct the learned Magistrate to dispose of the same, at the earliest, giving priority for disposal, in any case, within four months from the date of appearance of the parties, untrammeled by the observations contained herein.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 327 of 2002

J U D G M E N T

Dated: 21st March, 2007.